

Nos. 91-543; 91-558; 91-563

Supreme Court, U.S.

FILED

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IN THE

Supreme Court of the United States

October Term, 1991

THE STATE OF NEW YORK; THE COUNTY OF ALLEGANY; and THE COUNTY OF
CORTLAND,

Petitioners,

against

THE UNITED STATES OF AMERICA; JAMES D. WATKINS, as Secretary of Energy; IVAN
SELIN, as Chairman of the United States Nuclear Regulatory Commission; THE UNITED
STATES NUCLEAR REGULATORY COMMISSION; ADMIRAL JAMES B. BUSEY, IV, as
Acting Secretary of Transportation; and WILLIAM P. BARR, as United States Attorney
General,

Respondents,

THE STATE OF WASHINGTON; THE STATE OF NEVADA; and THE STATE OF SOUTH
CAROLINA,

Intervenors-Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

JOINT APPENDIX

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AND OCTOBER 3, 1991

CERTIORARI GRANTED JANUARY 10, 1992

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Table of Contents.

	Page
Docket Entries	2a
Complaint (dated 2/12/90)	13a
Affidavit of Delores Cross in Opposition to Motion to Dismiss Complaint (dated 9/5/90)	27a
Exhibit A—Resolution No. 45-89	34a
Exhibit B—Resolution No. 63-90	38a
Exhibit C—Newspaper Article	42a
Affidavit of Cindy M. Monaco in Opposition to Motion to Dismiss Complaint (dated 9/5/90)	46a
Exhibit A—Letter	70a
Exhibit B—Newspaper Article	72a
Exhibit C—Newspaper Article	74a
Exhibit D—Newspaper Article	76a
Affidavit of Clarence D. Rappleyea, Jr. in Opposition to Motion to Dismiss Complaint (dated 9/5/90) . . .	79a
United States Exhibits (included in the Compilation of Declarations and Exhibits filed on October 26, 1990)	84a
Exhibit A—Declaration of Stephen N. Solomon (dated 10/25/90)	84a

Exhibit B—Declaration of Richard L. Bangart (dated 10/25/90)	90a
Exhibit E—New York Power Authority Annual Report for 1989 (Exhibit only includes the cover and pages 25-27 of the report)	96a
Exhibit J—Low-Level Waste: A Program for Action, Final Report of the National Governors' Association Task Force on Low-Level Radioac- tive Waste Disposal (November, 1980) (excerpts)	105a
Affidavit of Booth Gardner (dated 10/26/90)	142a
Affidavit of Carroll A. Campbell, Jr. (dated 10/24/90) ..	147a
Affidavit of Robert J. Miller (dated 11/1/90)	152a

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THE UNITED STATES OF AMERICA; JAMES D. WATKINS, as
Secretary of Energy; IVAN SELIN, as Chairman of the United
States Nuclear Regulatory Commission; THE UNITED
STATES NUCLEAR REGULATORY COMMISSION; ADMIRAL
JAMES B. BUSEY, IV, as Acting Secretary of Transportation;
and WILLIAM P. BARR, as United States Attorney General,

Respondents,

THE STATE OF WASHINGTON; THE STATE OF NEVADA; and
THE STATE OF SOUTH CAROLINA,

Intervenors-Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

Docket Entries.

1990

Feb 12	1	Complaint, issued summons & returned to atty f/service
Mar 1	2	Original Summons & Affidavit of Svce of Summ/Complaint upon listed Defts, by mail on 2/14/90
Mar 16	3	FEDERAL Defts notice of appearance
Apr 25	4	DEFTS Letter stating parties have agreed to a 30 day extension of time for Defts to respond to Pltfs complaint
May 23	5	STIP/ORDER 5/23/90 (CGC) Defts time to Answer is extended to 6/8/90
Jun 8	6	Proposed Intervenor's (Movants) Notice of Motion for Leave to Intervene, returnable 7/6/90; Supporting Affidavit
Jun 8	7	Proposed Intervenor's Memo of Law
Jun 14	8	Proposed Intervenor's (Movants) Letter to Clerk confirming adjournment of their motion from 7/6/90 to 7/20/90
Jun 11	9	DEFTS Notice of Federal Defts' Motion to Dismiss returnable 8/17/90
Jun 11	10	DEFTS Motion to Dismiss
Jun 11	11	DECLARATION of Louise Milkman in support of defts' motion to dismiss
Jun 11	12	DEFTS Memorandum of Law
Jul 6	13	AFFIDAVIT of Cindy M. Monaco in opposition to motion to intervene
Jul 6	14	PLTF Cortland County's Memo of Law in Opposition to Motion for Leave to Intervene
Jul 9	15	PLTFS Answering Affidavit in Opposition to Intervention
Jul 9	16	PLTFS Memorandum of Law in Opposition to Motion for Leave to Intervene

Jul 9	17	PLTFS Certificate of Svce of Motion Opposing papers upon Counsel on 7/6/90
Jul 3	18	DEFTS Notice to Court stating No Opposition to motion for leave to Intervene by Movants and to notify Court of an error of citation in the Defts' Memo is Support of motion to Dismiss, filed on 6/8/90: on page 3, line 17 of that brief, the citation to 10 CFR part 24 (re: incineration) should be to 10 CFR Section 20.305
Jul 20		MOTION: by Proposed Intervenor's for Leave to Intervene = DENIED; Intervenor's allowed to proceed <i>amicus curiae</i> status, and file a brief
Jul 23	19	LETTER from AAG Berens adjourning motion from 8/17/90 to 10/5/90 State will submit opposing motion papers by 9/7/90
Jul 23	20	ORDER 7/20/90 (CGC) Movants' motion for leave to intervene is DENIED, except that (1) it is GRANTED to the extent of granting leave to movants to submit a single memo of law on the motion to dismiss and (2) granted to the extent of granting leave to movants to submit a single memo of law on pltfs motion for summary judgment
Aug 17		MOTION: Adj. to 10/5/90
Aug 30	21	Proposed Intervenor's (Movants) Notice of Motion for Leave to Intervene, returnable 9/21/90
Aug 30	22	Movants Supporting Affidavit by Christine Gregoire
Aug 30	23	Movants Supporting Affidavit by Jerry Griepentrog
Aug 30	24	Movants Supporting Affidavit by Michael Jarrett
Aug 30	25	Movants Memo of Law

Sep 7	26	PLTF County of Allegany's Affidavit in Opposition to Deft USA's M/Dismiss and in Support of M/Summ/Judgment of Pltf NY
Sep 7	27	PLTF County of Allegany's Memo of Law
Sep 7	28	PLTF County of Cortland's Affidavit in Opposition to to M/Dismiss
Sep 7	29	PLTFS County of Cortland's Affidavit os Clarence Rappleyea in Support of Pltfs Motion
Sep 7	30	PLTF County of Cortland's Memo of Law in Opposition to Fed/Defts M/Dismiss
Sep 7	31	PLTF County of Cortland's Affidavit in Opposition to Movants M/Intervene
Sep 7	32	PLTF County of Cortland's Memo of Law to M/Intervene
Sep 7	33	PLTF NYS's Affidavit in Opposition to Movants M/Intervene
Sep 7	34	PLTF NYS's Memo of Law
Sep 6	35	AMICUS CURIAE Memo of Law in Support of Defts M/Dismiss
Sep 7	36	PLTF NYS's Notice of Motion for Summ/Judgment, returnable 10/5/90; Supporting Affidavit
Sep 7	37	PLTF NYS's Rule 10j Statement
Sep 7	38	PLTF NYS's Memo of Law in Opposition to Defts M/Dismiss and in Support of its M/Summ/Judgment
Sep 14	39	Proposed Intervenor's (States of Washington, Nevada, & South Carolina) Notice of Motion to Dismiss, returnable 10/5/90
Sep 14	40	Proposed Intervenor's "States", Supporting Memo of Law
Sep 14	41	Transcript of Proceedings held before Judge Cholakis on 7/20/90
Sep 21	42	PLTF NYS's Affidavit in Opposition to M/Dismiss by "States"

Sep 21	43	PLTF NYS's Memo of Law
Sep 21		MOTION: by Proposed Intervenor's for leave to Intervene = Court GRANTS motion to Intervene, motions returnable 10/5/90 are adjourned to 11/2/90; answering papers to be filed by 10/19/90
Sep 24	44	Letter from Atty Milkman re: personal appearance not necessary for Motion term of 9/21/90
Sep 24	45	ORDER 9/21/90 (CGC) the Motion for Leave to Intervene is GRANTED; movants are granted intervention in this action as parties deft
Oct 4	46	STIP/ORDER 10/3/90 (CGC) Defts' & Intervenor's Response to Pltfs' Motions for Summ/Judgment/Oppositions to Defts' Motion to Dismiss will be served on all parties & Court by overnight mail on 10/26/90; Pltfs' Reply papers will be served on all parties & Court by overnight mail on 11/21/90; Oral argument set for 12/7/90
Oct 5		MOTIONS: Adj. to 11/2/90
Oct 26	47	Memo of Law of AMICUS CURIAE in Opposition to NYS's Motion for Summ/Judgment w/Exhibits
Oct 29	48	DEFTS (Fed) Cross-Motion for Summ/Judgment and in Opposition to Pltfs Cross-Motions for Summ/Judgment and in reply to Pltfs' Opposition to Defts' Motion to Dismiss, returnable 12/7/90
Oct 29	49	DEFTS Memo of Law
Oct 29	50	DEFTS Declaration of Louise Milkman in Support of Motion for Summ/Judgment
Oct 29	51	DEFTS Rule 10j Statment
Oct 29	52	DEFTS Compiled Declarations & Exhibits

ceding June 30 and December 31, by which dates such amounts are segregated for that purpose. Accordingly, at December 31, 1989 no liability is reflected in the accompanying financial statements for January 1, 1990 bond service payments of \$167,599,000.

(10) Investment of the Authority's funds is administered in accordance with the applicable provisions of the General Purpose Bond Resolution and with the Authority's investment guidelines adopted pursuant to Section 2925 of the Public Authorities Law. These guidelines comply with the New York State Comptroller's investment guidelines for public authorities. The Authority's investments have been restricted to obligations of the U.S. Government, its agencies and instrumentalities, and to agreements for the repurchase of such obligations and to direct and general obligations of any state or political subdivision, provided that such obligations were rated in either of the two highest rating categories by two nationally recognized bond rating agencies. All investments are held by the Authority's designated custodian in the name of the Authority. Securities that are the subject of repurchase agreements must have a market value at least equal to the cost of the investment, and the agreements are limited to a maximum fixed term of five business days. At December 31, 1989 the Authority had investments in repurchase agreements of \$48,160,000 and the aggregate cost of all investments in U.S. Government securities approximated market value based upon published bid prices. At December 31, 1989 the Balance Sheet reflects cash in the Restricted Funds, Construction Funds and in Current Assets of \$1,361,000. The available bank balances were \$12,918,000, of which \$549,000 was covered by Federal depository insurance, \$6,700,000 was collateralized and \$5,669,000 was uninsured. The uninsured balance

**United States Exhibit J—(included in the Compilation of Declarations and Exhibits filed on October 26, 1990)—
Low-Level Waste: A Program for Action, Final Report
of the National Governor's Association Task Force on
Low-Level Radioactive Waste Disposal (November,
1980) (excerpts).**

LOW-LEVEL WASTE:
A PROGRAM FOR ACTION

Final Report
of the
National Governors' Association
Task Force on Low-Level Radioactive Waste Disposal

November 1980

Energy and Natural Resources Program
National Governors' Association
444 North Capitol Street, Washington, D.C.

This report was prepared by members of the National Governors' Association Task Force on Low-Level Radioactive Waste Disposal and by the staff of the NGA Energy and Natural Resources Program.

Task Force Chairman: Governor Bruce Babbitt of Arizona.

Other task force members:

Governor Bill Clinton of Arkansas (Chairman, NGA Subcommittee on the Environment);
Governor John V. Evans of Idaho and Governor Richard L. Thornburgh of Pennsylvania (Co-chairmen, NGA Subcommittee on Nuclear Power);

Governor James R. Thompson of Illinois (Chairman, NGA Committee on Transportation, Commerce and Technology); Governor Robert List of Nevada and Governor Dixy Lee Ray of Washington (Co-chairman, NGA Subcommittee on Transportation of Hazardous Materials); and Governor Richard W. Riley (Chairman, State Planning Council on Radioactive Waste Management).

Price: \$3.00

November 1980

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CONTENTS

Overview.....	108a
The Issue.....	109a
Recommendations.....	113a
Regionalization.....	113a
The Siting Process.....	123a
Incentives and Benefits.....	129a
Research.....	135a
Other Recommendations.....	138a
Conclusion.....	140a
Appendix I. Interstate Agreements to Form Regional Low-Level Waste Disposal Sites.....	
Appendix II. Incentives for the Construction of Low-Level Nuclear Waste Facilities.....	
Appendix III. A Model Bill Granting the Consent of Congress to Interstate Compacts for the Establishment of Regional Low-Level Waste Disposal Facilities.....	

OVERVIEW

The National Governors' Association has in recent years actively promoted the concept of "cooperative federalism." The objective is to provide a more equitable division between federal and state roles in areas where states have the capacity and desire to assume responsibility. Low-level nuclear waste management is a field where the states and the federal government have shared responsibility since the inception of the Agreement States program in 1959. Though questions have arisen about some aspects of the program, over two decades of experience have demonstrated that states can and do possess the technical and administrative capacity to manage low-level nuclear waste disposal.

Last year's temporary closure of two of the nation's three commercial waste disposal sites dramatically highlighted the need to establish additional disposal facilities immediately. Those closures were precipitated by the consistent failure of waste generators to properly package and transport their waste and the subsequent failure of several state and federal agencies to adequately enforce waste packaging and transportation regulations and impose proper sanctions. The crisis created by the site closures also raised questions about the appropriate state and federal roles in securing additional capacity as soon as practicable. The prospect of a federally-imposed solution is one option. The Task Force, however, after assessing the problems and proposed alternatives, has concluded that a solution developed by the states is preferable and possible. A state solution recognizes that, in the final analysis, although certain federal involvement is required, the siting of a low-level nuclear waste facility involves primarily state and local issues which are best resolved at the governmental level closest to those affected.

Unlike many problems confronting the nation, the issue of low-level waste does not, in the view of the Task Force, present insurmountable technical or political obstacles. We do not underestimate the challenge involved in siting additional low-level waste facilities, but it has been demonstrated that safe, long-term disposal technology does presently exist and that through proper incentives and public education, increased adequate disposal capacity can be developed. The Task Force is encouraged that the findings of other groups studying the problem are in accord with those of the Task Force.

The relative unanimity of opinion among groups such as the NGA Task Force, the State Planning Council and the U.S. Department of Energy's Low-Level Waste Strategy Task Force, indicates that implementation of a regional strategy leading to the creation of regional sites is the major task remaining to resolve the low-level waste problem.

THE ISSUE

In July of 1979, the Governors of Nevada, South Carolina, and Washington, the states hosting the nation's only operating commercial low-level waste disposal sites, became concerned about the threat to public health and welfare posed by improper packaging and unsafe vehicles. They demanded that the Nuclear Regulatory Commission and the Department of Transportation enforce waste packaging and transportation regulations. Despite assurances from these agencies, the State of Washington found further violations of the regulations. Governor Ray closed the Hanford facility on October 4. On October 23, Governor List closed the Beatty, Nevada site after a U.S. Geological Survey team uncovered waste buried outside the existing fence—demonstrating inadequate record-keeping for past operations at the site.

The sites were eventually reopened, following promises of certain corrective actions, but the three Governors of the repository states clearly and forcefully wanted their unwillingness to continue to shoulder the entire national burden for low-level waste. They emphasized the necessity for other states to share in that responsibility. In addition, the citizens of repository states have for years borne the health and monetary costs of defective packaging and faulty vehicles. Moreover, some low-level waste is shipped from New England to Hanford, Washington causing excessive transportation costs and threatening unnecessary exposure to residents along the shipping route. The Governors' pronouncement, coupled with the diminishing physical capacity of those sites, compels immediate action.

Low-level wastes are defined as all radioactive wastes except spent fuel, high-level wastes which result from reprocessing of spent fuel, uranium mill tailings or wastes which contain more than ten nanocuries of transuranic contaminants per gram of material. They are generated by a wide variety of government, commercial, and medical sources. Federal generators of low-level include defense and research facilities.

The preponderance of commercial low-level waste is contaminated paper, plastics, rubble, filters, construction material, tools, and protective clothing from nuclear power plants. The growing use of radioactive materials in such products as luminous watch dials, measurement devices and smoke alarms has added to the volume of industrial waste. Finally, during the past two decades the medical profession and the academic community have increased their use of radioactive materials in research and diagnosis. Nearly 100 million diagnostic applications of radioactive isotopes are performed annually.

Excluding federal government sources, between 75,000 and 100,000 cubic meters of commercial low-level waste are generated each year. Nearly half comes from power plants, with almost a quarter from industry and the final quarter from medical and research institutions. A failure to expand low-level nuclear waste capacity can have serious adverse effects on our national energy program and our national health care system.

Low-level radioactive waste management may rapidly become crisis management if states continue to delay development of new disposal sites and techniques. National inaction regarding the creation of additional disposal capacity and techniques threatens to halt or seriously curtail medical research and diagnostic activities critical to the public health and welfare. Every community in this nation will be affected if it becomes more difficult to reap the benefits of nuclear medicine. The timetable associated with providing additional sites is a critical factor.

Until recently, Barnwell accepted low-level waste without restriction, annually receiving in excess of 75% of the nation's commercial wastes. However, since mid-1978, South Carolina has limited waste receipts at the Barnwell site to 2.4 million cubic feet per year. On October 31, 1979, Governor Riley announced a phased schedule to further reduce that limit to 1.2 million cubic feet within two years. Because it is geologically unacceptable, South Carolina also prohibits the burial of organic chemical wastes which comprise a large fraction of the wastes generated by hospitals, medical schools and universities. South Carolina has also refused to accept any waste from certain generators with poor packaging or shipping records.

Based on projected increases in the volume of low-level waste produced in this country and the restrictions on acceptance by current repository states, DOE estimates that a total of at least six low-level waste disposal sites could be required by the year 1990 in accordance with the following schedule:

- 1980 Barnwell, Beatty and Hanford can handle the nation's low-level waste
- 1982* Hanford could be closed as a national disposal site and a new site in addition to Barnwell and Beatty is required
- 1984 Beatty is filled to capacity and a second new site is required
- 1986 Only Barnwell remains open, three new sites are required
- 1988 Barnwell is still open, but the national generation rate requires four additional sites
- 1990** *Barnwell and five additional sites are required*

There are several other compelling facts:

- Projections from past trends indicate that the nation will generate 321,000 cubic meters of low-level waste by

*Policy issues, not physical limitations, are the more immediate factors controlling the future of the Hanford site. Governor Ray has threatened a 1982 closure of the Hanford site as a national repository (except for medical wastes) unless some meaningful progress occurs toward region formation. The mood of the state on this issue is further evidenced by a recent unsuccessful effort by the Washington State Legislature to codify Governor Ray's position, and a subsequent state initiative drive to accomplish the same. However, the actual physical capacity of the present Hanford site is not projected to be exhausted until approximately 1990, with the potential for future site expansion.

**In the absence of *any* restrictions or other complicating factors relating to these three sites, it is possible, but not probable, that all three sites could remain open until 1990. However, it is already questionable as to whether the Beatty site can expand on surrounding federal lands, and Barnwell has already adopted a phased volume reduction schedule

1990 as compared to approximately 99,000 cubic meters in 1980.

- DOE estimates that, with a total of six low-level waste disposal sites which may be required by the year 1990, by dividing the nation into five regions, no region would require more than 1-1/3 sites comparable to Barnwell's capacity.
- The U.S. Department of Energy estimates that without additional sites we could experience severe disposal problems by mid-1983.
- The Nuclear Regulatory Commission estimates that, even beginning immediately, complete development of a new site would take from two to four years.

In summary, the severity of the problem requires that additional waste disposal capacity be developed as soon as possible. To accomplish that, the Task Force urges the National Governors' Association to adopt the recommendations outlined below.

RECOMMENDATIONS

Regionalization

The most fundamental fact is that we do not need 50 separate state sites. Instead, there is a need for up to six to eight well-regulated and economically viable regional sites. The difficult problem is how to rapidly develop a *process* to first define the most appropriate multi-state regions.

Unlike high level waste, which is primarily a federal responsibility, the disposition of low-level waste should be largely a state responsibility. In that respect, a regional solu-

tion, where disposal sites would be determined by groups of states negotiating cooperatively, is the Task Force's preferred approach. Regionalization, as prescribed by states, is mandated by such considerations as costs, risk in transport, regional balance and geologic or hydrologic circumstances which may render some states unsuitable for such sites.

Recommendation 1:

EACH STATE SHOULD ACCEPT PRIMARY RESPONSIBILITY FOR THE SAFE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE GENERATED WITHIN ITS BORDERS, EXCEPT FOR WASTE GENERATED AT FEDERAL GOVERNMENT FACILITIES. WHILE EACH STATE IS FREE TO ESTABLISH ITS OWN SITE, THE STATES SHOULD PURSUE A REGIONAL APPROACH TO THE LOW-LEVEL WASTE DISPOSAL PROBLEM.

Since low-level waste is generated in every state, it is unfair to expect three states to shoulder the sole responsibility for the safe disposal of the entire nation's waste. Unlike high level waste, the problem is not so technologically complex that it requires the leadership of the federal government to manage it effectively. Because the states are primarily charged with protecting their citizens' health, safety, and environment, it is appropriate that they assume this responsibility. In addition, the public is more likely to accept siting and other waste management decisions made by state government than by a more remote, less accessible federal agency.

A regional approach is preferred because, with the exception of a few of the biggest waste-generating states, the volume of waste generated in a single state is too small to make a disposal site economical, i.e., to produce revenues sufficient

for its operation and maintenance. In addition, effective waste management requires coordination of regulation throughout the waste cycle—from generation through transportation and processing to ultimate disposal. Despite the best efforts of the disposal site state, improper handling of the waste at any point along the way can defeat the goal of safe disposal.

Regionalization is required by the diminishing capacity of current disposal sites. But even if the existing sites could continue to handle the entire national output of low-level waste, increasing transportation costs would favor establishing disposal facilities nearer to the waste generators and transportation risks are greater the longer the waste must travel.

Recommendation 2:

IN ORDER TO FACILITATE THE ESTABLISHMENT OF NEW DISPOSAL SITES, CONGRESS SHOULD AUTHORIZE THE STATES TO ENTER INTO INTERSTATE COMPACTS TO ESTABLISH REGIONAL DISPOSAL SITES. SUCH AUTHORIZATION SHOULD INCLUDE THE POWER TO EXCLUDE WASTE GENERATED OUTSIDE THE REGION FROM THE REGIONAL DISPOSAL SITE.

While the states should take primary responsibility for resolving low-level waste issues, they need the help of Congress to remove two obstacles in their path. First, the states should be given advance generic consent to form interstate compacts or other agreements in this subject area. Interstate compacts may be preferable to less formal modes of agreements between states because, as a binding contractual agreement, they provide the continuity of a stable framework which can endure from siting and licensing through decommissioning of a disposal site.

The Compact Clause of the U.S. Constitution requires either advance Congressional consent or subsequent ratification of a compact before it can take effect. By granting advance generic consent, Congress would facilitate the formation of regional low-level waste compacts by the states. Advance consent will also avoid the delay which would result if each individual compact had to be submitted to Congress for ratification following negotiation among the states.

Congress should also empower the states to exclude waste generated outside the region from their regional site. Recent court decisions indicate that, absent Congressional authorization, such a ban may be illegal. Without the authority to ban out-of-region waste many states may find it politically difficult to join a new regional waste compact.

Not only would this exclusivity power make it more attractive to form regional waste compacts in the first place, but as regions adopt such provisions the pressure will increase on those states which have not yet acted. (See Appendix I.)

In addition to compact authorization and exclusivity, the federal government should, at the same time, specify a strict policy for interim storage of low-level waste. Federal legislation should be considered to allow use of DOE sites only for temporary storage of low-level waste, and the storage fee should be commensurate with the disposal fee required by the operating sites. This would avoid the prospect of DOE sites becoming a permanent disposal alternative for those states failing to participate in a regional compact or develop their own site.

Two alternative approaches to Recommendation 2 were addressed by the Task Force with the following results:

- | | |
|----------------|---|
| Alternative 2A | Congress should require states to form regional compacts for low-level waste without mention of specific sanctions. |
| Alternative 2B | Congress should require states to form regional compacts and impose sanctions (similar to pending Congressional legislation) for states which fail to form compacts or establish their own sites. |

Many of the compact-authorization bills drafted so far have coupled Congressional consent with sanctions for failure by the states to act. For example, the Udall bill (H.R. 6390) and the Lujan bill (H.R. 6212) would cancel NRC licenses in states which have failed to act. A draft bill was submitted by DOE for consideration by the State Planning Council. It would ban interstate low-level waste shipments unless made pursuant to a regional compact. The Task Force feels that such coercive measures are unnecessary at this time.

If the strategy for region-formation suggested below is followed, most of the states can be grouped into waste disposal regions in the near future. If the new regions opt to exclude out-of-region wastes, then pressure will naturally build on the remaining states to devise their own regional or in-state disposal solutions. In this manner, pressure will come from the states themselves rather than from federal coercion. This process is viewed as being more consistent with the principle of state responsibility in this subject area than federal coercion would be.

Therefore, the Task Force would recommend that Congress defer consideration of sanctions to compel the establishment of new disposal sites until at least two years after the enactment of compact consent legislation. States are already confronting the diminishing capacity of present sites and an

unequivocal political warning from those states' Governors. If at the end of the two-year period states have not responded effectively, or if problems still exist, stronger federal action may be necessary. But until that time, Congress should confine its role to removing obstacles and allow the states a reasonable chance to solve the problem themselves.

Region Formation—A Strategy

The first challenge the states face in devising a regional solution is determining the regional boundaries. The location of the three existing disposal sites suggests a good starting point. Waste generation rates and transportation considerations should be taken into account in the formation of regions for new disposal sites. But in the final analysis region-formation is a political question which will be influenced by considerations such as historic and geographic ties among the states and the track record they have established for cooperation in other areas of mutual concern.

In devising a rational and orderly strategy for region formation, the Task Force was guided by the following premises:

1. Region-formation should be accomplished by the states, rather than imposed on them by the federal government.
2. Initiatives by groups of states which are already exploring the potential for regional cooperation should be encouraged. (Such initiatives have developed in the Midwest and the Northeast.)
3. The strategy should minimize the risk that individual states would end up isolated from a surrounding region.

In addition, the Task Force makes the following assumptions:

1. The three disposal sites currently operating will likely become regional sites.
2. The Midwest and the Northeast are the most logical areas for the establishment of the first new regional disposal sites both because they are more remote from the current sites, and they include some of the highest volume-generating states.

The Task Force has noted a general reluctance by some states to devise a regional program which actually specifies what states are within what regions.

The Task Force has attempted to tackle this tough issue with a proposal for an initial course of action along the following recommended guidelines:

Recommendation 3:

A TOTAL OF SIX REGIONAL CONFERENCES SHOULD BE ORGANIZED AS SOON AS POSSIBLE TO DISCUSS THE NEED FOR ADDITIONAL DISPOSAL SITES AND THE OPTIONS FOR REGIONAL FACILITIES. THE GOVERNORS OF STATES WITH OPERATING SITES SHOULD CONVENE A CONFERENCE ON REGION-FORMATION FOR THE STATES IN THEIR GENERAL AREA. ALSO, THE NATIONAL GOVERNORS' ASSOCIATION, IN COOPERATION WITH THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND THE STATE PLANNING COUNCIL, SHOULD CONVENE CONFERENCES ON REGION-FORMATION IN THE REGIONS WHICH DO NOT CONTAIN

OPERATING DISPOSAL SITES. ALTHOUGH PARTICIPATION IN EACH CONFERENCE SHOULD BE OPEN TO ANY STATE, THE FOLLOWING IS A *SUGGESTED* FORMAT:

Southeast Regional Conference

*South Carolina
North Carolina
Georgia
Florida
Alabama
Tennessee

Southwest Regional Conference

*Nevada
California
Arizona
New Mexico
Colorado
Utah

South Central Regional Conference

Texas
Louisiana
Mississippi
Arkansas
Missouri

Midwest Regional Conference

Illinois
Indiana
Ohio
Michigan
Wisconsin
Minnesota
Iowa

Northwest Regional Conference

*Washington
Alaska
Idaho
Montana
Oregon
Wyoming

Northeast Regional Conference

Maine New York
New Hampshire New Jersey
Vermont Pennsylvania
Massachusetts
Rhode Island
Connecticut

*The present repository states.

It should be noted that this format merely represents an initial attempt to suggest some natural groupings of states, based on their geographic proximity or previous cooperative efforts and agreements. For instance, states suggested in the Southwest and Northwest Regional Conferences have some historic ties as members of the Western Interstate Energy Board. Similarly, the states grouped in the South Central and Southeast Regional Conferences are among the states which

comprise the Southern States Energy Board. States listed below, not included in any of the above groups, should participate in their choice of one or more of the six conferences:

Hawaii

North Dakota

Nebraska

Kansas

Oklahoma

District of Columbia

Kentucky

Virginia

West Virginia

Maryland

Delaware

South Dakota

Other Alternatives

The Task Force considered the following alternatives to the above strategy:

- | | |
|----------------|---|
| Alternative 3A | Allow the states to continue to negotiate regional compacts on an ad hoc basis. |
| Alternative 3B | Request the federal government (Congress or DOE) to devise regions. |
| Alternative 3C | Have the states (through the NGA or other state association) convene a national conference on region-formation. |

Alternative 3A was rejected because many states have not yet become involved in any discussions leading toward a regional solution to the low-level waste problem. The Task Force placed a high priority on the early involvement of *all* states in this process. In addition, forming regions on an ad hoc basis poses a real danger of leaving some individual states isolated from surrounding closed regions.

Alternative 3B was rejected because it violates the first premise on which the Task Force proceeded. While federal

imposition may become necessary if the states fail to take timely action, it should be the last resort.

Alternative 3C was rejected because it was felt it would be extremely difficult, if not impossible, to achieve consensus among all fifty states on a particular regional scheme.

Other Regionalization Recommendations

Recommendation 4:

A COMPACT FORMED BY ANY REGIONAL GROUP OF STATES SHOULD CONTAIN A PROVISION FOR SUBSEQUENT ADMISSION OF NEW MEMBER STATES AND A MECHANISM TO ENABLE TEMPORARY OR EMERGENCY CONTRACTUAL ARRANGEMENTS WITH NON-REGION STATES OR INDIVIDUAL GENERATORS.

This would prevent a region's ability to exclude other states from becoming oppressive. Temporary arrangements would give time to states outside of compacts to develop their own compact or in-state site.

Recommendation 5:

THE U.S. DEPARTMENT OF ENERGY AND ALL OTHER APPROPRIATE FEDERAL AGENCIES SHOULD PROVIDE TECHNICAL ASSISTANCE TO EACH OF THE REGIONAL CONFERENCES. THIS SHOULD INCLUDE INFORMATION ON WASTE GENERATION, SITE CHARACTERISTICS AND TRANSPORTATION CONSIDERATIONS, AND OTHER RELEVANT

INFORMATION, IN ORDER THAT THE CONFERENCE CAN MAKE A PRACTICAL DETERMINATION ON REGION-FORMATION.

THE SITING PROCESS

Once the states have begun to form regions, the next major decision concerns the process which must be followed in order to develop an appropriate site within the region. Similar to the determination of regions, the siting process will be largely a political one. It will inevitably entail a mixture of state legislative and executive actions.

Consequently, it would be difficult and unwise to presuppose a uniform siting process. The details of the siting process and the individual state's commitments to the binding nature of the selection procedures should be negotiated as a provision of the compact.

A crucial issue here is public acceptance and the means by which the host state can maximize public acceptance. To help assure that support, the siting process must be scrupulously equitable for each state, and the public must know that its state will make the final decision. The whole issue of incentives discussed later, should also help to enhance public acceptance.

Accordingly, the Task Force suggests the following recommendations, alternatives, and other compact considerations with respect to the siting process.

Recommendation 6:

NGA RECOGNIZES THE POLITICAL, TECHNICAL AND ECONOMIC VARIABLES INVOLVED IN EACH REGIONAL PROCESS. THEREFORE, IT URGES THAT THE SPECIFICS OF EACH

REGION'S SITING PROCESS BE DETERMINED AS PART OF COMPACT OR AGREEMENT NEGOTIATIONS BY THAT REGIONAL GROUP OF STATES. HOWEVER, TO INSURE THAT THE SITING PROCESS INCLUDES A MAXIMUM AMOUNT OF LOCAL INPUT, EACH STATE WITHIN A REGION SHOULD CREATE ITS OWN STATE REVIEW COMMITTEE TO ACT IN AN ADVISORY ROLE TO ITS OWN EXECUTIVE AND LEGISLATIVE BRANCHES AND TO THE REGIONAL NEGOTIATORS. SUCH COMMITTEES SHOULD INCLUDE STATE, LOCAL AND TRIBAL OFFICIALS AND TECHNICAL EXPERTS APPOINTED BY THE GOVERNOR.

Such State Review Committees should play a central role in conjunction with technical assistance provided by the federal government in developing the blueprint for the siting criteria. These committees will help to offset existing credibility gaps between states and the assisting federal agencies. State Review Committees can provide ongoing cooperation and independent analysis of siting recommendations. State Committees will also begin to involve local, state and tribal officials early in the decision making stages of the siting process—a critical feature to later obtaining public acceptance in the site state. The specifics of this process are outlined below.

Steps toward compact formation

Typical compact provisions include: statement of purpose or policy, composition of a governing board, voting rights and financing provisions (see Appendix III). The basic steps toward compact formation include:

1. Region-formation

The region-formation strategy should yield at least nucleus of states within each of the six general regions. Those states which have reached tentative agreement to explore the possibility of forming a region can then proceed to more detailed negotiations. As they do so, they should try to keep the process open to additional states which may wish to join the region.

2. Negotiations

One consideration at this stage is who will negotiate for the state. The governor will in all likelihood appoint the negotiator(s). Since the final product will require legislative approval, a serious effort should be made to involve legislative leaders in the process from the beginning.

3. Execution

Once the party states have agreed on all the terms, a written agreement will be executed. Initial agreement could be expressed in one of two ways. The governors of each state could exchange reciprocal executive orders embodying the agreement. Or, if all of the party states belong to either the Western Interstate Energy Board or the Southern State Energy Board, the agreement could be executed as a "Supplemental Agreement" under the terms of the W.I.E.B. or S.S.E.B. compacts. However, either supplemental agreements or executive orders should be viewed as *interim* arrangements only (see Appendix I for more detailed discussion). Ultimately the agreement should be submitted to the legislature of each party state for enactment as a formal interstate compact. Though less formal agreements may serve as a basis for interstate cooperation, pending legislative enactment and the passage of Congressional consent legislation, it is only through legislative enactment by each state that the compact becomes a contrac-

tual obligation, legally binding on all the parties. Also, legislative enactment probably would tend to promote greater public acceptance of the proposal.

Site Selection Mechanics

While the various regions will want to adopt site selection procedures which are tailored to their own needs, the Task Force recommends the approach outlined below as one practical solution, with several alternative approaches also suggested. It is important to note that the policy and political decision-making process recommended below is in no way meant to be in lieu of environmental impact statements or any other environmental requirements.

1. Each state in the region should be encouraged to form a State Review Committee, composed of state, local and tribal officials, and technical experts. The State Review Committee would make an initial characterization of potential sites within the state with federal technical assistance as requested. As mentioned, this process would involve local, state and tribal officials early in the decision-making stages of the siting process—a critical feature to later obtaining public acceptance in a site state. Each State Review Committee would be encouraged to forward two or more site candidates to the Regional Review Committee.

2. The Regional Review Committee would be comprised of the Chairpersons of each State Review Committee in the region. The Regional Review Committee would narrow the number of candidate sites and make a more detailed characterization of each.

3. Final site selection would be made by the governing board of the compact. The Board would select a site from the

list of candidate sites submitted by the Regional Review Committee.

In addition, consideration should be given to formation of a national review board, comprised of members from each region. That board could negotiate from a national perspective—other potential tradeoffs among states or regions. The board could among other things, facilitate agreements whereby regions exchange different forms of low-level waste.

The Task Force considered, but ultimately rejected, the following as possible alternative approaches to the site selection mechanics:

Alternative 6A Allow DOE and USGS to recommend three suitable sites within each region or devise site selection criteria.

Alternative 6B Request NGS (or other state association) to devise a site selection process.

Host State Rights

The Task Force recommends the following approach to the controversial issue of veto action by a state selected as a regional site:

Recommendation 7:

A STATE WHICH IS ULTIMATELY SELECTED AS A REGIONAL SITE CAN EXERCISE A VETO, BUT AS A PENALTY THAT STATE COULD BE REQUIRED TO DROP OUT OF THAT COMPACT

An inevitable question is whether a state chosen to host a regional site should ultimately have veto power. Realistically, states would have a difficult time relinquishing all veto power.

In accordance with the site selection mechanics, a potential site state would have an opportunity to make its case for or against a proposed site to the Regional Review Committee and to the Board. If, despite all the evidence and argument presented by the site state, the Board ultimately selects that site over the site state's objection, the question of veto rights arises. Even if a site state veto is expressly disallowed by the terms of the compact, a *de facto* veto would likely result if the site state simply refuses to cooperate.

Therefore, the Task Force recommends that the site state be given the right to veto the Board's final decision, but the Board should have the authority to impose sanctions, including expulsion from the compact, if a veto is exercised. By expressly allowing a veto, some states' reluctance to enter a regional compact may be minimized. But significant sanctions should discourage unreasonable vetoes. If the vetoing state is denied access to the regional site it will have to either find another region which will accept its waste, or make its own arrangements in-state. The former would be very difficult, and the latter would likely be economically unattractive. In addition, the vetoing state will probably confront the same political problems in developing an in-state site which it encountered in the regional siting process.

In summary, site-selection procedures should be spelled out in all regional compacts. Even if the region contains an operating disposal site (or if one of the states in the region has offered to host a new regional site) the region may need additional disposal sites in the future. Also, the compact may become involved in siting other low-level waste management facilities, such as a waste processing plant. Or the compact

may become involved in siting hazardous waste facilities in one state as an incentive to the acceptance of a low-level waste facility in another state.

INCENTIVES AND BENEFITS

Expeditious development of regional low-level nuclear waste facilities will likely depend on the quality and quantity of incentives and benefits available to state and local units of government. The concept of *incentives* recognizes the need to encourage and motivate the states and local communities to accept location of a low-level nuclear waste disposal facility. For example, the availability of funds to be used at the discretion of site states and site communities, would act as a positive inducement toward locating a site. On the other hand, the concept of *benefits* acknowledges the need to provide some type of rightful compensation or commitment for specific needs of or effects on a state and community as a result of their acceptance of such a regional facility. For instance, such benefits could include financial commitments to the site state and community and substantial Perpetual Care and Decommissioning Funds to be provided by waste generators agreed to as a condition of their licensing.

Successful efforts to encourage public acceptance of a site must provide incentives and benefits to those affected by the presence of a regional site. Accordingly, two distinct parties need to be benefited: (1) the local community hosting the waste facility; and (2) the site state. These two parties should receive some kind of incentive and benefit to be provided by the federal government and the generating states within the region. Various state and federal legislative action should be encouraged to achieve that purpose.

To date, federal legislation has taken a negative approach in attempting to force state action on the disposal issue. The Task

Force prefers the carrot to the stick and believes that sanctions should be a last resort, only instituted if constructive programs fail to accomplish state action.

The degree to which incentives and benefits are utilized to facilitate local acceptance of a site will depend in part on the success of public education programs. Such programs can minimize the overall need for such incentives or benefits by increasing public awareness regarding the actual low risk associated with such sites. This is especially true given the general public's lack of understanding about the nature of low-level radioactivity.

Consequently, the most effective methods of achieving public acceptance in locating such a facility are to provide for public participation, public education and some form of financial incentive or benefit to the regional site state and community. State, federal and private interests must jointly share the responsibility for accomplishing these educational and economic purposes. Here the concept of "cooperative federalism," so deeply imbedded in our country's history, will face one of its more rigorous tests.

The Task Force offers the following recommendations on the question of incentives and benefits and encourages reference to Appendix II for a more complete discussion of these issues:

Recommendation 8:

CONGRESS SHOULD CREATE A SPECIAL DISCRETIONARY FUND WHICH WOULD CONFER COMPENSATORY AND FINANCIAL BENEFITS TO SITE STATES AND SITE COMMUNITIES TO ACCOMPLISH AT LEAST THREE MAJOR PURPOSES: (1) TO COMPENSATE FOR SIGNIFICANT

EFFECTS TO THE INFRASTRUCTURE OF THE COMMUNITY HOSTING A LOW-LEVEL NUCLEAR WASTE FACILITY, (2) TO PROVIDE EFFECTIVE INDUCEMENTS TO DEVELOP REGIONAL LOW-LEVEL NUCLEAR FACILITIES, AND (3) TO PROMOTE PUBLIC ACCEPTANCE OF LOW-LEVEL NUCLEAR WASTE DISPOSAL SITES.

ADDITIONAL INCENTIVES COULD INCLUDE CERTAIN REGULATORY AND ENFORCEMENT AGREEMENTS AMONG THE GENERATING STATES AND A SYSTEM OF "BONUS" REVENUES TO THE SITE COMMUNITY, PART OF WHICH COULD INCLUDE STATE TAXES ASSESSED AGAINST GENERATORS OR SOME FORM OF COMPENSATION AGREED UPON AMONG THE GENERATING STATES.

The following is a suggested approach to Recommendation 8:

1. *The Federal Role:* Federal incentives must include funds to states for preliminary technical assistance and site characterization *and* a special fund consisting of discretionary grants awarded to states hosting a new regional site. The use of such grant monies would be left to the site states and site communities to decide, although eligibility for such funds could be tied to a regional agreement to establish a waste tracking system or agreement to establish a regional volume reduction policy. The discretionary grant appropriation would revert to the U.S. Treasury at a date certain as a further incentive to promote a quick state-regional response.

2. *The State Role:* Incentives to the site state and site community should include two basic approaches:

- Generating states in the region should provide some combination of economic, regulatory and enforcement commitments to the site state, and
- The site state should require economic incentives be available to any local community or county where the regional site is located.

Generating states should form strict agreements, as part of the terms of a compact, that they will at least:

- Take enforcement action against waste generators in their state on notice of violations.
- Provide inspections of packaging operations prior to shipment to avoid the unsafe transport of low-level wastes.
- Develop policies on transportation routing and notification of shipment.

As a condition of licensing, the site state could require payment of a "bonus" amount from all generators in the region. That revenue would accrue to the site community for its own selected use. A fair compensation sum would be determined by the local government, industry and the states.

3. *Industry's Role:* It is reasonable to assume that the private sector will assume the capitalization costs for regional sites provided there is enough anticipated waste volume to guarantee a profitable operation. Accordingly, industry must be involved in the early stages of development of regional sites to help determine if the volume generated within the proposed region is sufficient to guarantee future profits and thus induce their front-end investment. Operators of the Barnwell site have estimated capitalization costs for a site to be between \$6 and \$10 million, from initial licensing to completed construction.

The overall pricing system must insure profitability, but at the same time generators must help to provide part of the additional funding for incentives and benefits to the state and local community hosting the site. Generators of the waste should be obligated to pay the previously mentioned "bonus" dollars to local communities, and they should also be required to contribute to the site state's Perpetual Care and Decommissioning Funds.

Recommendations 9:

FEDERAL FUNDS MUST BE MADE AVAILABLE FOR SITE CHARACTERIZATION STUDIES, PLANNING GRANTS, AND OTHER TECHNICAL ASSISTANCE FOR STATES TO DEVELOP REGIONAL SITES. SUCH FUNDING SHOULD BE MADE AVAILABLE IN A MANNER TO ENCOURAGE DEVELOPMENT OF REGIONAL SITES.

Part of the federal role must be to offer available resources only to states engaged in preliminary activities required to develop regional sites. At a minimum, the Nuclear Regulatory Commission, the U.S. Environmental Protection Agency, the U.S. Geological Survey, the U.S. Department of Energy and the Department of Transportation must be available for all reasonable technical assistance requested by such states. Critical to establishing productive state-federal relationships throughout the process will be the state's ability to acquire independent capability to assess their waste disposal problems.

Recommendation 10:

AS A TERM OF THE COMPACT, THE GENERATING STATES SHOULD PROVIDE THE SITE STATE ADEQUATE INCENTIVES. THESE

INCENTIVES, TO BE NEGOTIATED BY THE PARTICIPATING STATES, COULD INCLUDE BINDING COMMITMENTS FOR IMPROVED REGULATORY ENFORCEMENT AND AGREEMENTS AMONG STATES TO EXCHANGE DIFFERENT WASTES OR TO NEGOTIATE SPECIFIC EXCHANGES BASED ON ECONOMIC OR OTHER NEEDS OF STATES WITHIN A REGION.

Specific commitments to site states from generating states could include (see Appendix II for more detailed discussion):

- Negotiating tradeoffs among states, such as one or more states agreeing to develop hazardous waste sites or a low-level waste processing facility in exchange for use of a low-level disposal site in another state. For example, the State Commerce Departments in Oregon and Washington negotiated such an exchange agreement in the mid-1960's. Oregon accepts toxic chemical waste from the State of Washington and sends its low-level waste to the Hanford disposal site.
- Requiring strict enforcement or immediate action against the waste generators upon notification by the site state of violations committed by the shipper of a generating state.
- Providing for vigorous enforcement of strict packaging and transportation regulations.

It should be noted that federal rule making is currently underway to improve transportation safety and licensing procedures regarding low-level waste. The U.S. Department of Transportation has proposed "Radioactive Materials Highway Routing Regulations." The proposed new requirements would provide national uniformity in highway routing, a notification

system to states and a data bank for future emergency response planning. Similarly, the U.S. Nuclear Regulatory Commission has issued a preliminary draft of its regulations (10 C.F.R. Part 61) relating to licensing of low-level waste disposal sites. Although the proposed regulation will not be published for written comment in the *Federal Register* until early 1981, currently NRC is holding regional workshops to receive critiques on the draft.

RESEARCH

Ongoing, vigorous and comprehensive research programs are necessary in the management of low-level radioactive waste to assure that existing and future low-level waste disposal sites can meet all applicable criteria and standards to protect public health and safety using the best available technology. In addition, such programs can serve to enhance confidence in the methods used to manage these wastes.

Although the techniques used in the management of low-level waste have improved since 1962 when the first commercial low-level waste disposal site was licensed, the basic technology has seen little change. Recently, due primarily to the rapidly increasing costs for disposal, the incentives to develop new technologies have increased, especially in the area of waste treatment and volume reduction. This has prompted the commercial sector to increase its research and development efforts in these particular areas.

The Department of Energy is currently conducting research to improve the management of low-level waste. The Nuclear Regulatory Commission and the Environmental Protection Agency both have ongoing research and assessment programs in support of their development of standards for low-level waste management. These federal efforts include all aspects of radioactive waste management, from generation to final disposal.

While these ongoing efforts are acknowledged, it is felt that programs aimed at managing low-level wastes can be better enhanced if priority research attention is given to the areas recommended below.

Recommendation 11:

A SIMPLE CLASSIFICATION SYSTEM FOR LOW-LEVEL WASTE IS URGENTLY NEEDED. THE NUCLEAR REGULATORY COMMISSION MUST DEVELOP A SYSTEM BASED ON THE TOTAL HAZARD WHICH INCLUDES AN UPPER AND LOWER CONCENTRATION LIMIT.

Low-level waste is currently defined in the regulations as all radioactive waste which is not defined as high-level waste. This is a totally inadequate definition because certain low-level waste may be considered to be below a threshold concentration and therefore could be disposed of as ordinary trash with insignificant impact, while other low-level waste may be above a concentration that would make it unacceptable for shallow land burial.

Recommendation 12:

THE NRC MUST ESTABLISH IMPROVED GUIDELINES CONCERNING GENERATION AND TREATMENT METHODS FOR LOW-LEVEL WASTE. A VOLUME REDUCTION POLICY FOR ALL COMMERCIAL GENERATORS OF RADIOACTIVE WASTE MUST BE ESTABLISHED THAT ADDRESSES BOTH ADMINISTRATIVE AND TECHNOLOGICAL METHODS

THAT HAVE BEEN PROVEN AS VIABLE ALTERNATIVES. THIS POLICY SHOULD APPLY TO AGREEMENT STATES AS WELL.

Because of the lack of classification system for low-level waste and the somewhat inadequate regulations concerning generation and treatment, many forms of low-level waste are currently treated and disposed of by methods which are in many cases less than desirable. The NRC policies should include:

1. Continuing research into ways to reduce at the source the total volume of radioactive waste generated through such techniques as substituting non-radioactive substances for radioactive ones and substituting short-lived nuclides for longer-lived ones.
2. Improved methods of segregating and identifying waste at the source, thus eliminating that segment of trash that is currently deemed radioactive by association.
3. Improved methods of volume reduction for certain types of waste such as: (a) controlled incineration for combustible trash and scintillation fluids; or (b) advanced methods of treatment such as calcination for other types of low-level nuclear waste streams.
4. Improving the characteristic of the final low-level waste product by developing better solidification media, improved containers or a combination of both.

Recommendation 13:

A COMPREHENSIVE ENVIRONMENTAL MONITORING PROGRAM IS ESSENTIAL TO DETERMINE HOW EFFECTIVE THE TREATMENT AND DISPOSAL CONSIDERATIONS HAVE BEEN.

Continuing research is necessary to insure that equipment and techniques for environmental monitoring are optimized to detect and isolate possible migration of radioactive material for a low-level waste site both during the operational period and after decommissioning.

OTHER RECOMMENDATIONS

Recommendation 14:

AS A TOP PRIORITY, THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF TRANSPORTATION SHOULD DEVELOP A COMPREHENSIVE AND COORDINATE INSPECTION AND ENFORCEMENT PROGRAM TO INSURE STRICT COMPLIANCE WITH PACKAGING AND TRANSPORTATION REGULATIONS.

Since the closure of the two western sites, due mainly to sloppy waste shipments, NRC and DOT have made a more serious effort to improve their policies in these areas. Prior to that, according to a recent report issued by the U.S. General Accounting Office, the agencies gave a low priority to enforcement, relying mainly on the integrity of shippers and carriers to comply with the regulations governing the safety of radioactive materials' transportation. The GAO report concludes that much of their work remains fragmented and in need of improvement. For instance, neither NRC nor the Department has done an independent assessment of the scope of the packaging and transportation problems.

DOT is currently involved in rulemaking on Highway Routing of Radioactive Materials (Docket HM-164) which includes the movement of spent fuel and other forms of radioactive material and waste. In that respect, it should be noted that the issue of "prenotification" is of particular concern to states. NGA should consider encouraging DOT to cooperate

with state, local and tribal governments to design and test a system of prenotification on the highway movement of radioactive materials and wastes, to include the point that existing prenotification systems in states not be preempted.

Recommendation 15:

THE AGREEMENT STATES SHOULD BE ENCOURAGED TO ADOPT CIVIL PENALTY AUTHORITY TO ASSIST IN ENFORCEMENT OF NUCLEAR WASTE REGULATIONS.

The same GAO report concluded that the enforcement program of Agreement States was not comparable to that of NRC's because only two of the 26 states have adopted civil penalty authority. Such authority could serve as an intermediate enforcement tool between a written notice of noncompliance and injunction authority—the two actions now available. This authority might encourage more effective and immediate compliance as opposed to just a written notice to a licensee.

Recommendation 16:

THE NRC SHOULD ESTABLISH NATIONAL STANDARDS FOR A "CRADLE TO GRAVE" MANIFEST SYSTEM—IN A COORDINATED AND MORE STREAMLINED VERSION OF THE HAZARDOUS WASTE PROGRAM UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT—TO TRACK LOW-LEVEL WASTE FROM THE POINT OF GENERATION TO THE POINT OF DISPOSAL. AGREEMENT STATES SHOULD BE ENCOURAGED TO ADOPT A COMPARABLE METHOD TO INCREASE REGULATORY OVERSIGHT ON A NATIONAL BASIS.

It is estimated that anywhere from 15% to 40% of low-level waste is not accounted for.

Recommendation 17:

THE NATIONAL GOVERNORS' ASSOCIATION SHOULD PLAY AN ACTIVE ROLE IN IMPLEMENTING THESE RECOMMENDATIONS AND IN WORKING WITH OTHER ORGANIZATIONS TO ACCOMPLISH THE GOALS AND OBJECTIVES SET FORTH IN THIS REPORT. TOWARD THAT END, THE TASK FORCE ENCOURAGES THE NGA TO ALLOCATE SPECIFIC FUNDING AND STAFF RESOURCES FOR IMPLEMENTATION OF THE RECOMMENDATIONS OF THIS REPORT.

CONCLUSION

Developing additional sites and disposal and source reduction techniques for low-level nuclear waste disposal is a critical national priority which requires the expeditious and cooperative action of all states. Clearly, every community in this nation benefits from the nuclear medicine and industrial uses which generate a large portion of this waste. Consequently, it is unfair to expect only three states to solely share the waste disposal burdens for the entire nation's benefits.

In addition to the question of the equity in sharing that burden, there is general consensus that in the next two decades, if the projected increases in national waste generation are accurate, between six and eight new disposal sites may be required. Failure to meet those needs could stifle the national health care delivery system and have serious effects on a major source of our electricity.

In this report, the Task Force has attempted to first define the pivotal issues related to the national waste disposal problem and then recommend pragmatic and innovative solutions.

The Task Force has concluded that the remaining issues are not technical, but matters of public policy and political decision-making. The consequences of inaction in developing additional sites were dramatically revealed last year with the temporary closure of two of the three national disposal facilities.

Therefore, the Task Force strongly emphasizes the need for prompt action by states to begin that important cooperative effort. The national challenge to safely and economically resolve the problems of low-level waste disposal can be met through the swift and responsible action of every state.

STATE OF WASHINGTON)
) ss.
County of Thurston)

1. I am the Governor of the State of Washington.

3. In 1979, the state of Washington together with the states of Nevada and South Carolina concluded that the three states in which the commercial low-level radioactive waste disposal facilities operated had borne the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly Governor Dixie Lee Ray, my predecessor as Governor of Washington, Governor Richard W. Riley of the state of South Carolina, and Governor Robert List of Nevada announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).

4. The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving Wash-

6. After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985 over thirty states including Washington, Nevada, and South Carolina entered into seven regional compacts and at least two other states had decided to develop their own interstate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986 and the other states would not have had any place to send their waste for disposal.

7. From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the states of Washington, South Carolina, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state-generated and approved National Governors Association's proposal served as the foundation for Congressional action. In 1985 Congress took the state-developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

8. The state of Washington, as does New York, chooses to allow and license the construction and operation of various facilities which produce low-level radioactive waste as an agreement state under the Atomic Energy Act. Washington recognizes that the benefits of these operations accrue to all its citizens despite the burden of providing for waste disposal. Generators of low-level waste, licensed by and located in the state of New York for beneficial purposes, have continued to ship radioactive waste out of New York to one of the open disposal sites in Washington, South Carolina, or Nevada in reliance on the provisions of the Amendments Act.

9. Under the 1985 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated from what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional compact. Each of these compacts and states have made progress toward development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated a proposed agreement whereby the states of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in Washington for the disposal of low-level radioactive waste pursuant to the Amendments Act.

10. If the act is determined to be unconstitutional or otherwise invalid, it is my intention to reevaluate the policy position Washington should take for continued operation of its disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take

title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the union to solve this national crisis based on the compromise developed by the states and unanimously approved by Congress.

(Sworn to by Booth Gardner, October 26, 1990.)

Affidavit of Carroll A. Campbell, Jr. (dated 10/24/90).

STATE OF SOUTH CAROLINA)
COLUMBIA, SOUTH CAROLINA)

Carroll A. Campbell, Jr., being duly sworn, says:

- 1) I am Governor of the State of South Carolina.
- 2) The State of South Carolina has been a sovereign state since March 26, 1776, and became the eighth state of the United States when it ratified the Federal Constitution in 1788. This affidavit is submitted in support of the annexed motion of the states of Washington, Nevada, and South Carolina for Summary Judgment and Dismissal of the above-captioned lawsuit.
- 3) In 1979, the State of South Carolina together with the States of Nevada and Washington, concluded that the three states in which commercial low-level radioactive waste disposal facilities operated had borne the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly, Governor Richard W. Riley, my predecessor as Governor of South Carolina, and Governor Robert List of Nevada and Governor Dixie Lee Ray of Washington announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).
- 4) The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving South

Carolina, Washington, and Nevada of this entire burden. Under the 1980 Act, Congress gave the responsibility for management of the disposal of low-level radioactive waste to each state within whose borders such waste is generated. The concept of state responsibility for the proper disposition of low-level radioactive waste was not an independent creation by Congress, but was cooperatively recommended and developed by the states through the National Governors Association which represents the governors of all fifty states. Under the 1980 Act, Congress encouraged the states to form regional compacts to develop regional low-level waste disposal facilities. Under the 1980 Act, after January 1, 1986 the regional compacts were given the authority to restrict out-of-region waste from being disposed at the regional disposal site.

5) After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985, over thirty states including South Carolina, Washington, and Nevada entered into seven regional compacts and at least two other states had decided to develop their own interstate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986.

6) From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if

Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the states of South Carolina, Washington, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state-generated and approved National Governors Association's proposal served as the foundation for Congressional action. In 1985, Congress took the state-developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

7) The State of South Carolina, as does New York, chooses to allow and license the construction and operation of various facilities which produce low-level radioactive waste as an agreement state under the Atomic Energy Act. South Carolina recognizes that the benefits of these operations accrue to all its citizens despite the burden of providing for waste disposal. Generators of low-level waste, licensed by and located in the state of New York for beneficial purposes, have continued to ship the radioactive waste out of New York to one of the open disposal sites in South Carolina, Washington, or Nevada in reliance on the provisions of the Amendments Act.

8) Under the 1986 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste of disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated from what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois, and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional

compact. Each of these compacts and states have made progress toward development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated an agreement whereby the states of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act Policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in South Carolina for the disposal of low-level radioactive waste pursuant to the Amendments Act.

9) If the Act is determined to be unconstitutional or otherwise invalid, it is my intention to re-evaluate the policy position South Carolina should take toward continued operation of the disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the Union to solve the national crisis based on the compromise developed by the states and unanimously approved by Congress.

(Sworn to be Carroll A. Campbell, Jr., October 24, 1990.)

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**Affidavit of Robert J. Miller in Support of Motion to
Dismiss Complaint (dated 11/1/90).**

STATE OF NEVADA)

) ss:

CARSON CITY)

Robert J. Miller, being first duly sworn, deposes and says:

1. I am Governor of the State of Nevada.

2. The State of Nevada has been a sovereign state of the United States since October 31, 1864. This Affidavit is submitted in support of the annexed Motion of the States of Washington, Nevada and South Carolina for Summary Judgment and Dismissal of the above-captioned lawsuit.

3. In 1979, the State of Nevada, together with the States of South Carolina and Washington, concluded that the three states in which commercial low-level radioactive waste disposal facilities operated had borne the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly, Governor Robert List, my predecessor as Governor of Nevada, Governor Richard Riley of the State of South Carolina, and Governor Dixie Lee Ray of Washington announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).

4. The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving Washington, South Carolina, and Nevada of this entire burden.

Under the 1980 Act, Congress gave the responsibility for management of the disposal of low-level radioactive waste to each state within whose borders such waste is generated. The concept of state responsibility for the proper disposition of low-level radioactive waste was not an independent creation by Congress, but was cooperatively recommended and developed by the states through the National Governors Association which represents the governors of all fifty states. Under the 1980 Act, Congress encouraged the states to form regional compacts to develop regional low-level waste disposal facilities. Under the 1980 Act, after January 1, 1986 the regional compacts were given the authority to restrict out-of-region waste from being disposed at the regional disposal site.

5. After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985, over thirty states including Washington, Nevada, and South Carolina entered into seven regional compacts and at least two other states had decided to develop their own intrastate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986 and the other states would not have had any place to send their waste for disposal.

6. From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if

Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the States of Washington, South Carolina, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state-generated and approved National Governors Association proposal served as the foundation for Congressional action. In 1985, Congress took the state-developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

7. The State of Nevada, as do other states, chooses to allow the construction and operation of various facilities which produce radioactive waste, recognizing that benefits of these operations accrue to the citizens despite the burden of providing for waste disposal. Generators of low-level waste licensed by and located in the State of New York for beneficial purposes have continued to ship radioactive waste out of New York to one of the open disposal sites in Washington, South Carolina, or Nevada in reliance on the provisions of the Amendments Act.

8. Under the 1985 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated form what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois, and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional compact. Each of these compacts and states have made progress toward

development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated an agreement whereby the States of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act Policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in Nevada for the disposal of low-level radioactive waste pursuant to the Amendments Act.

9. If the Act is determined to be unconstitutional or otherwise invalid, it is my intention to re-evaluate the policy position Nevada should take toward continued operation of the disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the Union to solve this national crisis based on the compromise developed by the states and unanimously approved by Congress.

10. Further affiant sayeth not.

(Sworn to by ROBERT J. MILLER.)